

JOHN WRIGHT

IBLA 87-730

Decided December 20, 1989

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims null and void ab initio in whole or in part. M MC 104003 et al.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Because a recorded description and the map of a mining claim filed with BLM along with a copy of the notice of location for the claim are not required to be precise, the uses which may be made of the information submitted necessarily depend on its relative accuracy. If accurate, a map will show the position of a claim in relation to landmarks, other claims, or corners of the public land survey, and may permit BLM to determine that the land on which the claim is located has been patented or withdrawn.

2. Mining Claims: Lands Subject to

Mining claims located on land unavailable for location and entry under the mining laws are null and void ab initio.

3. Mining Claims: Lands Subject to--Mining Claims: Placer Claims

A placer mining claim partially located on land patented without a mineral reservation to the United States is properly declared null and void to the extent it includes such land.

4. Mining Claims: Withdrawn Land--Mining Claims Rights Restoration Act--Withdrawals and Reservations: Powersites

BLM properly declares a placer mining claim null and void ab initio where it was located on land subject to

a license for a power project under a powersite withdrawal and the land had not been restored to mineral entry in accordance with sec. 24 of the Federal Power Act, as amended, 16 U.S.C. § 818 (1982).

APPEARANCES: J. David Penwell, Esq., Bozeman, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

John Wright has appealed from a decision dated July 14, 1987, by the Montana State Office, Bureau of Land Management (BLM), declaring eight placer mining claims null and void ab initio in whole or in part. The decision states in pertinent part as follows:

The JET NO. 1, JET NO. 2, JET NO. 3, JET NO. 4, and Jet No. 6 (M MC 104003, M MC 104005, M MC 104007, M MC 104009, and M MC 115573, respectively) placer mining claims are declared null and void, ab initio, each in part, because they are located partially on lands not open to mineral entry. The JET NO. 1 through JET NO. 4 mining claims lie in part on the streambed of the Missouri River; the JET NO. 4 and Jet No. 6 mining claims lie in part on Patent No. 358631.

IN ADDITION, the Jet No. 5, Jet No. 7, and Jet No. 8 (Relocated) (M MC 115572, M MC 115574, and M MC 125440, respectively) mining claims are declared null and void, ab initio, each in its entirety, because they are located totally on lands not open to mineral location. The Jet No. 5, Jet No. 7, and Jet No. 8 (Relocated) mining claims lie in part on the streambed of the Missouri River. The remainder of the Jet No. 5 and Jet No. 8 (Relocated) mining claims overlap Patent No. 633349 and Patent No. 358631. Jet No. 7 lies in part on Patent Nos. 126, 633349, and 358631 as well as within Power Project No. 2853 withdrawal.

It is a well settled principle of law that upon admission of a state to the United States, the ownership of the bed of a navigable river passes from the United States to that state. The Missouri River is classified as a navigable river from Three Forks downstream to its confluence with the Mississippi River. When Montana became a state on November 8, 1889, ownership of the streambed of the Missouri between the points mentioned above vested with the state on that date. Therefore, any portion of the mining claims described above which lies in the streambed of the Missouri River is null and void, ab initio.

* * * * *

Your Jet No. 7 (M MC 115574) mining claim lies in part on lands which were included in Power Project No. 2853 (M 55922) withdrawal effective June 1, 1980. The portion in question lies in T. 4 N., R. 3 E., sec. 6 SW¼ SW¼, P.M.M., and is outlined in blue on the enclosed MT plat. The application for the preliminary permit was received by the Federal Energy Regulatory Commission (FERC) on June 13, 1978, and the permit issued on June 1,

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1980, for a term of 24 months. Issuance of the preliminary permit application closed the lands to all other types of appropriation, including entry and location under the public land laws. Prior to expiration of the preliminary permit, an application for license was received by FERC on May 28, 1982. The application for license continued the segregative effect of the withdrawal established under the preliminary permit. The license issued effective April 1, 1984. Copies of the preliminary permit and license are enclosed for your information.

The decision also lists the patents in conflict with appellant's claims and describes the lands embraced by each.

On appeal, appellant does not dispute the legal bases for BLM's decision. Rather, he attempts to challenge its factual foundations, contending that "there does not appear to be a correlation between the legal description contained on the claims and the descriptions set forth in the [BLM] decision" (Statement of Reasons at 4):

For example, [BLM] found that all of placer claims 5, 6 and 7 were void in their entirety as either being in the streambed of the Missouri River or on patented lands or within the withdrawn Power Project No. 2853. The legal description contained within the [BLM] decision * * * however, does not correspond with the legal description of placer claims 5, 6 and 7. * * * It is impossible, at least for [appellant], to extrapolate from the description on the Certificate[s] of Location to the MT plat the specific locations of the claims and correlate them with those portions of said claims which may fall on patented land, the Missouri River streambed, and/or power site withdrawals or reservations.

(Statement of Reasons at 3-4). Appellant contends BLM's decision is premature until the claims are surveyed in accordance with 30 U.S.C. § 39 (1982). Until then, he argues, his claims are presumed valid because he has complied with all requirements for locating them under the mining law.

43 CFR 3833.1-2(b)(5)(ii) provides:

The location of the claims or sites shall be depicted on either a topographic map published by the U. S. Geological Survey or by a narrative or a sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic, or man-made feature. Such map, narrative description, or sketch shall set forth the boundaries and position of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or mineral interests in such lands to identify and locate the claims or sites on the ground.

The "map, narrative description, or sketch" is required to be filed along with a copy of the notice or certificate of location for the claim within 90 days after the date of location. 43 CFR 3833.1-2(b).

Because appellant's placer claims were located along the sinuosity of the Missouri River, it would have been difficult to describe them to conform to the rectangular survey system. And, indeed, appellant did not attempt to so describe them on his certificates of location, but simply stated what township(s), range(s), and section(s) they were in. To comply with 43 CFR 3833.1-2(b)(5)(2)(ii) for the Jet Nos. 5, 6, and 7 claims, appellant submitted a photocopy of a Geological Survey map with three contiguous rectangles drawn on it to depict the location of the claims. For the Jet No. 8 (Relocation) claim appellant submitted a photocopy of a BLM plat map with the claim boundaries drawn on it. Appellant did not include a map with his certificates of location filed October 17, 1983, for the Jet Nos. 1-4 claims, so BLM issued a Notice of Recording Deficiency on November 1, 1983, enclosing a copy of a portion of the Master Title Plat and requesting him to sketch where each claim was located. Appellant did not respond, so by decision dated March 25, 1985, BLM rejected these claims for recordation subject to submittal of the required descriptions within 30 days from receipt of the decision. Appellant filed the copy of the plat map with four rectangles drawn on it on April 9, 1985.

[1] We have said that

[b]ecause a recorded description and the map filed with BLM are not required to be precise, the uses which may be made of information submitted necessarily depend on its relative accuracy. Arley Taylor, [90 IBLA 313 (1986)] at 317. If accurate, a map will show the position of a claim in relation to landmarks, other claims, or corners of the public land survey, and may permit BLM to determine that the land on which the claim is located has been withdrawn. But a map is useful only to the extent it accurately represents the territory and the claim or claims mapped.

Outline Oil Corp., 95 IBLA 255, 259 (1987). In this case, appellant's descriptions of the location of the claims on the certificates of location were either ambiguous or partially inaccurate but his maps are accurate enough for BLM to determine that all of the lands on which his claims are located have been patented or withdrawn, and the claims were therefore null and void ab initio either in whole or in part. The discrepancies appellant refers to between the general descriptions on the certificates of location and the more specific descriptions provided in BLM's decision are inconsequential. In general, the discrepancies result from the fact that BLM described the location of each claim based on appellant's maps and specified the quarter section(s) the claim was located in while appellant simply stated the claim's township(s), range(s), and section(s) on its certificate of location. In most instances the location of the claim on the map differs from the description on the certificate of location.

To begin with the example appellant gives in his statement of reasons, *i.e.*, the Jet Nos. 5, 6, and 7 claims, two of the three descriptions provided on the certificates of location differ from the descriptions provided for those claims in the BLM decision. (There is no difference between the descriptions of the location of the Jet No. 5 claim, apart from the addition of the quarter sections in BLM's decision.) The certificate for Jet No. 6 says it is located in "Twp. 4 N., Rge. 2+3+ E., Sec. 7+12+6." There is a

pencilled notation on the certificate that reads "See Map T 4 N R 3 E Sec 6 SW $\frac{1}{4}$,] 7 NW $\frac{1}{4}$," and this corresponds to the description for that claim given in the BLM decision. The "map" referred to is the map filed with BLM when the certificates of location were filed on October 31, 1984. However, despite the indication to the contrary on the certificate, none of the Jet No. 6 claim is shown on that map as lying within T. 4 N., R. 2 E., sec. 12. Similarly, for Jet No. 7, the certificate reads "Twp. 4 N., Rge. 2+3 E., Sec. 7+12+6," the pencilled notation (as well as the BLM decision) reads "T 4 N R 2 E Sec. 1 SE $\frac{1}{4}$, 12 NE $\frac{1}{4}$,] R 3 E Sec 6 SW $\frac{1}{4}$, 7 NW $\frac{1}{4}$," and the map clearly shows a portion of the claim lies in T. 4 N., R. 2 E., sec. 1. The discrepancy is inconsequential because even if none of Jet No. 7 lies in sec. 1, as appellant's map shows, the plat map shows that all the remaining lands it covers have either been patented or withdrawn for the power project, as described in BLM's decision, so the claim was properly held null and void in its entirety. The Jet No. 6 claim was declared null and void in part. Omitting sec. 12 from the description of the Jet No. 6, as BLM did based on appellant's map, simply eliminates land that is patented.

The difference between the description provided on the certificate for the Jet No. 8 (Relocation) claim (T. 4 N., R. 3 E., secs. 6 & 7) and that given in the BLM decision (T. 4 N., R 2 E., sec. 12 NE $\frac{1}{4}$, R. 3 E., sec. 7 NW $\frac{1}{4}$) is also based on the map appellant filed with his certificate of location on April 9, 1986, and is similarly inconsequential: the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 6, which appellant presumably had in mind when entering the description on his certificate, is withdrawn for the power project; the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 12 stated in BLM's decision is land covered by Patent No. 633349 without reservation of minerals; and the balance of the claim covers the bed of the Missouri River and land covered by Patent No. 358631. So whether a corner of the claim lies in sec. 6 or sec. 12 makes no difference to BLM's conclusion that the entire claim lies on land either patented or withdrawn. The Jet No. 5 claim is shown on the October 31, 1984, map in the same location as the Jet No. 8 (Relocation) claim is shown on the April 9, 1986, map, and was properly held null and void in its entirety for the same reason as the Jet No. 8 (Relocation) claim.

As for the Jet Nos. 1-4 claims, the certificates for these claims describe them as being located in secs. 6 and 7 of T. 4 N., R. 3 E., of the Principal Meridian. On the Jet Nos. 1 and 3 certificates, "6 SE" has been substituted for "sections 6 and 7." The certificates for Jet Nos. 2 and 4 have been modified to place these claims in the E $\frac{1}{2}$ of sec. 6 and the NE $\frac{1}{4}$ of sec. 7, SE $\frac{1}{4}$ of sec. 6, respectively. The changes on the latter two certificates are signed and dated by a BLM employee and contain the additional notation "see map rec'd 4/9/85." Appellant's map filed on that date clearly shows that each claim lies partly within the bed of the Missouri River in the section indicated in the revised descriptions on the certificates. The BLM decision held these claims null and void in part to the extent they lie in the streambed of the Missouri River: "[a]ny portion of the mining claims described above which lies in the streambed of the Missouri River is null and void, ab initio" (Decision at 2). BLM's decision also held the Jet No. 4 claim (as well as the Jet No. 6 claim) null and void in part to the extent of conflict with Patent No. 358631. BLM's decision does not define what these "portions" and "parts" are. However, was not unreasonable for BLM to use appellant's maps to determine that

these claims were null and void in part, and its decision is correct to the extent that the positions of these claims on the ground actually lie within the bed of the Missouri River or conflict with Patent No. 358631 or both. Outline Oil Corp., *supra* at 260. ^{1/}

[2, 3] It is well settled that mining claims located on land unavailable for location and entry under the mining laws are null and void ab initio. Merrill G. Memmott, 100 IBLA 44 (1987). Further, a placer mining claim partially located on land patented without a mineral reservation to the United States is properly declared null and void to the extent it includes such land. Florian L. Glineski, 87 IBLA 266, 270 (1985).

[4] It is also well established that land which is covered by a license for a power project issued by FERC is not open to entry unless it has been restored to entry in accordance with section 24 of the Federal Power Act, as amended, 16 U.S.C. § 818 (1982). Where a mining claim is located at a time when the land is closed to mineral entry under section 2(a) of the Mining Claims Rights Restoration Act, as amended, 30 U.S.C. § 621(a) (1982), BLM properly declares the claim null and void ab initio. Leslie Corriea, 93 IBLA 346 (1986).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

^{1/} Appellant asserts in his statement of reasons that he had also filed "Jet Lode claims 1 through 4 which overlap Jet Placer Claims 1 through 4" and that these lode claims were declared null and void insofar as they were located on the streambed of the Missouri River. BLM's decision lists the Jet Nos. 1 through 4 lode claims (BLM serial Nos. M MC 104002, N MC 104004, N MC 104006, and N MC 104008) and states with regard to these claims:

"[T]he exterior boundary lines of the JET NO. 1 through 4 lode claims may be laid within or across the surface of the segregated land solely for the purpose of claiming unappropriated ground to secure the extralateral rights to the deposit. It must be understood that the claimant has acquired no rights in the surface or mineral estate of these segregated lands." (Emphasis in original).

Appellant does not challenge this determination. See Sante Fe Mining, Inc., 79

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IBLA 48 (1984).

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